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Before the
Federal Communications Commission
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Implementation of the)
Cable Television Consumer)
Protection and Competition)
Act of 1992)
)
Home Shopping Station)
Issues)

MM Docket No. 93-8

COMMENTS OF

CONTINENTAL CABLEVISION, INC.

Continental Cablevision, Inc. ("Continental"), is the third largest U.S. cable system operator. Continental serves almost 2.9 million cable subscribers in 600 communities in 16 states. Continental's cable systems carry a substantial amount of home shopping programming, through carriage of both cable distributed nonbroadcast home shopping networks and broadcast stations with a home shopping format.

Definition Of A Home Shopping Format Station

The FCC's Notice of Proposed Rulemaking ("NPRM") asks for suggestions as to how the FCC should define broadcast television stations that are "predominantly utilized for the transmission of sales presentations or program length commercials," and therefore within the ambit of the 1992 Cable Act's mandate that the FCC determine whether such stations should be qualified for mandatory

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cable system carriage.^{1/} Continental believes that the must-carry rules in the 1992 Cable Act will be held unconstitutional. But to the extent these rules are upheld, Continental suggests that the Commission use all three of the suggestions it proposes in Paragraph 5 of its NPRM to define the home shopping format stations to be subject to the FCC's review. A broadcast station should be considered "predominantly utilized" for sales presentations or program length commercials if it carries such programs either:

- (1) eight hours per day between 6:00 a.m. and midnight;
- (2) more than 50% of its programming week; or
- (3) more than 50% of prime time.

All of the above criteria are valid measurements of a home-shopping format station. Use of these three measures as alternative tests should capture any stations that use such a format for a "predominant" portion of their broadcast time, whether the station is using the format on a part-time or full-time basis.

^{1/} Section 614(a)(2) of the Communications Act, added by

Home Shopping Station Format "Competition" Is Not A Valid FCC Concern

Apart from this definitional issue, Continental wishes to focus its comments on the issue of home shopping format "competition" that is addressed by Paragraph 10 of the NPRM. The FCC appears to believe that a cable operator has an incentive to carry only those home shopping programs in which it has a financial interest. This concern Continental believes, is unfounded. Like Continental, many cable companies that have ownership interests in nonbroadcast home shopping programmers also carry home shopping programmers in which they do not have any ownership interest. Continental's carriage of Home Shopping Network (HSN) and QVC Network Inc (QVC) is quite similar,^{2/} even though Continental has had a longstanding ownership interest in QVC.^{3/} Similarly, Continental provided substantial distribution to the former J.C. Penny Home Shopping Service, even though Continental had no ownership interest in that service.

2/ In fact, considering carriage of both services offered by each major home shopping company (i.e. QVC, QVC Fashion Channel, HSN-1 and HSN-2), Continental distributes HSN product more broadly than QVC's products.

3/ Continental owns an interest of about 3% in QVC

Moreover, "competition," either between QVC and HSN, or through HSN's division into two formats --- a cable-specific format and a broadcast format --- has not produced materially different program services. HSN is the major network distributor of home shopping programming to broadcast television stations. HSN-1, which is provided by satellite to cable systems, and HSN-2, which is provided to broadcast stations, have essentially the same format. They may have different hosts, and may advertise one product on one day on HSN-1 and on a different day on HSN-2, but essentially they are providing the same sales format and the same products. And, while QVC provides a second channel emphasizing soft goods, the QVC Fashion Channel, the difference between the two formats is not by any objective measure substantial. The diversity offered by these services pales against the difference between The Learning Channel and Arts and Entertainment, or between Court TV Network or Black Entertainment Television and the Discovery Channel, any of which might be displaced by required carriage of both a broadcast and a nonbroadcast home shopping channel.

Moreover, providing HSN-format broadcast stations with this advantage could actually decrease competition. HSN, having two sources of carriage -- required carriage on cable through their broadcast outlets and negotiated carriage through their cable network --- will have an unfairly advantageous position both as

against QVC and as against any new market players. This will likely discourage any new entrants into this field.^{4/}

The FCC Is Not Directed By Congress To Promote Home Shopping Broadcast Stations

Providing home shopping broadcast television stations with must-carry rights would create a new and artificial pressure for creation of more such stations. Potential market entrants -- of which there are several, including the fledgling Valuevision service -- would be forced to adopt a "broadcast strategy" of either affiliating with or purchasing stations. The marketplace, not government, should be the determinant of whether even more home shopping television stations would serve the public interest.

The FCC was not given direction by Congress to favor carriage of these stations. The debate on this issue was balanced. The provision governing this issue that was inserted by Congress in the 1992 Act^{5/} gave the FCC broad discretion to

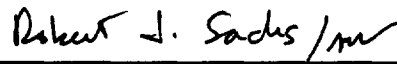
^{4/} At a minimum, if a cable system is already carrying HSN-1 (the cable version), it should not also be required to carry a broadcast station with the HSN-2 format that is largely duplicative of HSN-1. Some of Continental's systems carry both HSN-1 and HSN-2 on a voluntary basis. But cable systems should not be required to carry both the HSN-1 and HSN-2 formats. At most, again assuming that the 1992 Act's must-carry rules are upheld, only a cable system has no existing HSN carriage agreement should be required to carry a broadcaster with an HSN home shopping format in its market.

^{5/} Section 614(g)(2), supra.

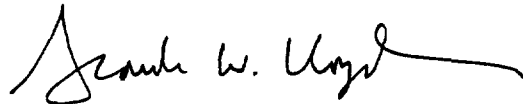
find that the public interest would not be served by requiring cable systems to carry such stations.

Continental believes that the issue of whether some or all home shopping stations may be found minimally qualified to warrant continued FCC license authorization and renewal should be separated from the issue of whether these stations deserve mandatory cable carriage, assuming that must-carry rules are upheld by the courts. The Commission should give a broadcast station a clear indication that only a reduction in the time devoted to the home shopping format below the criteria specified above would allow it to become a must-carry station.

Respectfully submitted,



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